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December 11, 2000

RECEIVED

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

*Re: Reply Comments of IP Communications Corporation in CC Docket No. 00-217*

Dear Ms. Salas:

Pursuant to the Commission's public notice, IP Communications Corporation ("IP") hereby files its reply comments in CC Docket No. 00-217 relating to SWBT's applications for Section 271 Relief in Kansas and Oklahoma.

Thank you for your cooperation in this matter. If you have any questions, do not hesitate to contact me.

Sincerely,



Howard J. Siegel  
Vice President of Regulatory Policy  
IP Communications Corporation

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**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the matter of	)	
	)	
Application of SBC Communications Inc.,	)	
Southwestern Bell Telephone Company,	)	
And Southwestern Bell Communications	)	
Services, Inc. d/b/a Southwestern Bell Long	)	
Distance for Provision of In-Region	)	
InterLATA Services in Kansas	)	
	)	CC Docket No. 00-217
Application of SBC Communications Inc.,	)	
Southwestern Bell Telephone Company,	)	
And Southwestern Bell Communications	)	
Services, Inc. d/b/a Southwestern Bell Long	)	
Distance for Provision of In-Region	)	
InterLATA Services in Oklahoma	)	

**Reply Comments of IP Communications Corporation on SBC's Applications for  
271 Relief in Kansas and Oklahoma**

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December 11, 2000

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Distance for Provision of In-Region	)	
InterLATA Services in Oklahoma	)	

**Reply Comments of IP Communications Corporation on SBC's Applications for  
271 Relief in Kansas and Oklahoma**

On October 26 2000, SBC Communications Inc. and its subsidiaries, Southwestern Bell Telephone Company and Southwestern Bell Communications Services, Inc., d/b/a Southwestern Bell Long Distance (collectively, SWBT and/or SBC) filed a joint application for authorization to provide in-region, interLATA service in the States of Kansas and Oklahoma, pursuant to section 271 of the Communications Act of 1934, as amended (the Act), 47 U.S.C. § 271. IP Communications Corporation ("IP") filed comments on November 11, 2000 and an ex parte letter that affectively supplemented those comments on November 30, 2000. IP hereby provides

reply comments pursuant to the Common Carrier Bureau's Public Notice<sup>1</sup> to elaborate and support certain points raised in the evaluation of the Department of Justice ("DOJ").

## **I. INTRODUCTION AND SUMMARY**

The DOJ Evaluation<sup>2</sup> noted specific deficiencies in the SWBT applications. Specifically, those comments discussed concerns relating to the unbundled network element ("UNE") rates charged by SWBT and the lackings within the evidence provided by SWBT regarding its OSSs. As a participant in the state proceedings, IP has equally raised these concerns at the state level and in prior FCC filings. For example, during the Oklahoma hearing, in the area of UNEs used for digital subscriber line (DSL)-based services, IP raised concerns regarding rate levels and the lack of state-specific provisioning data in IP's prefiled testimony, in live testimony, and during cross examination. IP urges a thorough evaluation of the records at the state level so the Commission can confirm that the underlying record is supportive of the DOJ Evaluation and the concerns previously raised by IP.

In these reply comments, IP seeks to accomplish two tasks. First, IP provides additional comment to support the position taken by the DOJ that the existence of the Alternative Regulation Rates ("Alt Reg Rates") cannot be used to support the 271 application. Second, IP elaborates on one key point in the DOJ's Evaluation that was also discussed by IP, i.e.

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<sup>1</sup> *Comments Requested On The Application By SBC Communications Inc. For Authorization Under Section 271 Of The Communications Act To Provide In-Region, Interlata Service In The States Of Kansas And Oklahoma*, FCC Public Notice, CC Docket No. 00-217 (rel. Oct. 26, 2000).

<sup>2</sup> It is worth noting that while the DOJ Evaluation raises critical concerns, that evaluation was narrow in scope. As such, the DOJ Evaluation does not address other critical issues raised by IP that have a specific relevance to advanced services. The additional issues include, but are not limited to, failure to unbundled Pronto-related facilities and provide unfiltered loop make-up information as required by the *UNE Remand Order*.

provisioning performance from one state cannot be used to support a 271 application in another state.

As stated in IP's initial comments, IP is hopeful that the FCC will reject the applications not to make life difficult for SWBT but so the existing deficiencies can be addressed by IP and others at the state level such that when these applications come back to the Commission, there will be a record in place that can be used to evaluate the true status of competition in these states. Additionally, as noted above, IP has provided proposed solutions regarding rates that should immediately address both the DOJ's concerns regarding rates charged now as well as a process for obtaining permanent rates that would likely address DOJ's reasonable concerns as to blindly relying on interim rates in these applications.

## **II. ALT REG RATES DO NOT ADDRESS THE CONCERNS AS TO EXCESSIVE RATES**

As stated in IP's initial comments, the rates in Kansas and Oklahoma are generally excessive when compared to the Texas rates that this Commission found to be TELRIC-based in its *Texas 271 Order*.<sup>3</sup> The DOJ Evaluation equally reflected the inflated nature of the rates in these states. In addition to raising the excessive nature of SWBT's O2A and K2A rates, DOJ also noted that it would be inappropriate to consider the temporary Alt Reg rates in Oklahoma as a cure for the excessive O2A rates. This is true for a number of reasons and while IP does not possess expert and detailed knowledge regarding the vast number of limitations in the Alt Reg plan, IP has become aware of a number of deficiencies.

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<sup>3</sup> Application by SBC Communications Inc., Southwestern Bell Telephone Company, And Southwestern Bell Communications Services Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services in Texas, *Memorandum Opinion and Order*, CC Docket No. 00-65, rel. June 30, 2000 ("*Texas 271 Order*")

First and foremost, the Alt Reg plan excludes on DSL related UNEs. As such, when reviewing the barriers to entry in DSL markets created by excessive O2A rates, the existence of Alt Reg rates is truly irrelevant. IP, for example, is a DSL provider. The UNEs purchased by IP will largely be the following: xDSL loops, line sharing- related UNEs (e.g. the high frequency portion of the loop “HFPL”, and unbundled splitter ports), unbundled transport (e.g. DS1, DS3, and OC3 capacities), transport-related UNEs (e.g. entrance facilities), next generation digital loop carrier-related UNEs and, as markets mature, dark fiber. Instead of addressing, for example, xDSL loops, the Alt Reg rates are largely limited to UNE-P related UNEs. As a result, none of the Alt Reg rates will offset the barriers to entry created by the excessive O2A rates.

Additionally, the Alt Reg rates come with various strings attached. First, their availability is limited in time. Thus, while SWBT may be arguing that the existence of an O2A that lasts four years into the future effectuates a lowering of barriers, the Alt Reg plan may expire long before that. Second, the Alt Reg plan is limited in quantity. As certain competition thresholds are reached, the Alt Reg rates evaporate. What will be left are the excessive O2A rates, which are a barrier to entry as a result of their being far in excess of forward-looking cost. Third, the CLEC that accepts the Alt Reg plan must waive its right to adopt the SBC/Ameritech Merger Condition discounts created by this Commission. As a result, not only are the Alt Reg rates higher than in Texas, the CLEC is required cede its right to merger-related discounts. On the other hand, what this Commission should expect is O2A rates that are consistent with the Texas-T2A rates. If the Oklahoma commission wishes to approve an optional discount plan like Alt Reg to cut deeper than the Texas rates, then – and only then – would it be appropriate for a CLEC to be required to pass on the merger condition discounts.

Finally, the Alt Reg rates do not address other excessive rates not discussed above. Of particular concern to IP are excessive OSS service order charges which are well above the Texas rates even though SWBT's 271 application is based upon its argument that the same systems and local service center ("LSC") employees handle CLEC orders throughout the five-state region. Similarly, other DSL-related transaction charges are excessive. For example, SWBT charges over \$92 for a manual loop qualification. This is well in excess of the Texas rate. Other necessary UNEs/services, such as loop conditioning and collocation, were very recently converted from excessive rates to "interim" rates. Not only to the very recent excessive rates contribute to the failure of competition to develop in these states, i.e. the SWBT's excessive rates contributed to the lack of sufficient volumes to monitor SWBT market performance that was noted in the DOJ Evaluation, the fact that the new interim rates are in place gives CLECs little comfort as to the long term prospects in these states given the excessive rates that have been approved historically. IP has offered a process, discussed in IP's initial comments, that if implemented would not only put in place reasonable TELRIC-based rates today but set up a narrowly tailored procedure for making state-specific adjustments when truly appropriate. Such a process should address the concerns raised in the DOJ Evaluation.

So it is clear, IP stated the following in its initial comments.

"IP's proposal for Kansas and Oklahoma, as filed in Missouri, is as follows:

1. 'The existing T2A, the Texas collocation tariff, Texas xDSL interim rates, Texas line sharing interim rates, Texas line splitting interim rates once developed and Texas Pronto-related interim rates once developed, be adopted as interim Missouri rates.'



2. ‘When the permanent collocation, xDSL, line sharing, line splitting, and Pronto-related permanent rates are set in Texas, those rates will become the new interim rates in Missouri’;
3. ‘For the T2A rates that are permanent in Texas today, SWBT and CLECs will have six months to establish state-specific cost factor hearing to adjust the rates based on proven state-specific differences between Texas and Missouri. If no request is made in the 6 month period, the rates become permanent’;
4. ‘As the collocation, xDSL, line sharing, line splitting, and Pronto rates become permanent in Texas, the same 6 month period would apply’; and
5. ‘All interim rates would be subject to true-up with the exception that for those rates that are permanent in the T2A, the ability to true-up the rates would go away if Missouri-specific rates are not developed within 6 months after a conforming M2A is approved. For those rates that are not permanent in Texas, if Missouri-specific rates are not developed within 6 months of those rates being final in Texas, there would not be a true-up’.”<sup>4</sup>

### **III. LACK OF DEMONSTRATED PERFORMANCE TO CLECS TO SUPPORT SWBT’S COMPLIANCE WITH THE *LINE SHARING ORDER* AND THE *UNE REMAND ORDER*.**

The lack of demonstrated performance in Kansas and Oklahoma to demonstrate Section 271 compliance was raised in the DOJ Evaluation, as well as IP’s initial comments.

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<sup>4</sup> *Comments of IP Communications Corporation on SBC’s Applications for 271 Relief in Kansas and Oklahoma*, at 7-8. (“IP Initial Comments”).

What the DOJ Evaluation does not mention, which was brought to the Kansas commission's attention in IP's supplemental comments at the state level, is the fact that during the 271 hearing in Oklahoma, the SWBT performance measure expert agreed that provisioning performance from one state cannot be used to support a 271 application in another. Specifically, during the Kansas state proceeding, IP informed the Kansas commission that SWBT effectively agreed with IP that the Kansas Staff's rationale was faulty. The following section is quoted from IP supplemental comments that were filed in Kansas in September.<sup>5</sup>

"In IP's reply comments, IP discussed a number of positions and conclusions regarding DSL provisioning (e.g. xDSL loops and line sharing). The following is a limited sample of the statements from those reply comments:

"What is clearly incorrect is Staff's expansion of that principle to apply the "Regional Analysis" to provisioning issues. Provisioning is based on state-specific (and often central office specific) factors including the level of staffing in a particular office, the level of staffing in the regional area, the quality of training, local practice, level of employee retention, workload, average experience, success of local management teams, average number of customers per central office, etc. Consequently, it is erroneous to assume that provisioning performance in one location will be repeated in another location. A cursory review of performance data will prove that. There are substantial variations from one state to another. In fact, in Texas, there are substantial variations from the four market areas within that state. For example, at page 9 of the consultants' report attached to Staff's recommendation, the consultants make it clear that it is the "systems" that it believes have regional attributes. The consultants were very clear to limit their discussion to "systems," which excludes provisioning.

'At page 51, Staff finds that "SWBT is providing non-discriminatory access to xDSL capable loops." The recommendation does not support that statement. Instead, there is a one sentence reference to the pre-order and provisioning processes being identical through out the 5-state region. No data is cited to support the conclusion. No reference to the ordering or maintenance processes are discussed. Most importantly, no

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<sup>5</sup> IP Communications Corporation's Post Initial Administrative Meeting Comments,, September 30, 2000 ("IP Supplemental.Kansas Comments").

justification is made to support the extrapolation that the existence of identical "provisioning processes", if that is accurate, automatically means CLECs are receiving parity treatment and that SWBT has taken the steps in Kansas to assure parity treatment. Only performance data can support a conclusion that xDSL loops are provisioned at parity in Kansas. And if adequate commercial performance does not exist, then test performance is necessary. Staff's erroneous conclusion appears to result from two high level errors. First, the premise that provisioning results are portable from state-to-state is erroneous as discussed above. Second, Staff does not appear to be applying a burden of proof on SWBT. It is SWBT's obligation to support its application with evidence necessary to support each and every element of its application. Staff does not appear to have required such information to support its recommendation.

'It should go without saying that to meet its burden of proof, SWBT must demonstrate parity loop performance in Kansas. Similarly, that burden must be supported by proof of actual performance not promises or hopes for the future. Yet, Staff's Recommendation, after noting deteriorating performance on page 60 states the following at page 61, "To the extent that SWBT uses common processes to install xDSL service, **Staff believes as Kansas order volumes increase, SWBT's parity performance will more closely align with that of its other states.**" The recommendation goes on to find compliance with the checklist item based on a *belief* that things will be better in the future. A 271 application cannot be supported by such "nonevidence".

'As with xDSL loop performance, Staff has a lot of confidence in SWBT since it avoids the lack of any commercial data to support the application regarding line sharing by simply noting at page 62 that "**Staff believes that SWBT will be in compliance with the Line sharing provisions once data is available.**" Notwithstanding Staff's belie[f], such is not the test. SWBT must provide sufficient commercial data to demonstrate compliance or pass an independent third party test'."

"Unfortunately, Staff has not used the opportunity afforded to it to modify its recommendation to account for the obvious failure of SWBT to prove its 271 compliance with sufficient, if any, evidence in this critical area. IP includes this issue in its supplemental comments because it is clear from testimony from SWBT during the Oklahoma 271 proceeding that SWBT agrees with IP on the proper application of provisioning performance data. The following questions were asked by IP's counsel with answers provided by SWBT witness Randy Dysart in Oklahoma (the transcript pages [we]re

attached [to IP's supplement/post administrative meeting comments] as Exhibit 1):

'Q. In some earlier discussion with Mr. Cowlshaw there was discussion regarding OSS measures and Southwestern Bell's contention -- well, let me make sure I understand. Is it Southwestern Bell's position that because the OSS are regional, as their contention is, that the performance of those systems should be fairly consistent state to state within the SWBT region?

'A. They should be consistent if the proportionate types of orders are issued for Oklahoma CLECs is the same as for the other states, and yes, they would be consistent.

'Q. But that logical process wouldn't necessarily be applicable for other kinds of measures, like, for example, a provisioning measure which may vary by central office staffing and other state specific and location specific reasons.

'A. No, it would not be. Logic would not carry forward, no.

'Q. And where Southwestern Bell, as Ms. Ham discussed earlier, might suggest that a state should look at Texas data or regional wide data to support the Oklahoma application, Southwestern Bell wouldn't argue -- it would be a mistake to simply -- for this commission or any other state commission to simply adopt performance measures and results from another state when you're talking about provisioning measures, for example.

'A. Well, specifically provisioning measures and maintenance measures, you can adopt the performance measurement. The Business Rule, that's all applicable. What's different, because there's different people working on the provisioning, there's different people working on the actual maintenance, the performance for Oklahoma is the performance for Oklahoma.

'Q. And the same would be true for every SWBT state?

'A. That's correct'." <sup>6</sup>

In spite of the irrefutable admission, the Kansas commission approved its Staff's recommendation that used the exact rational in the area of DSL-related UNEs that SWBT agreed

was inappropriate and invalid. Moreover, as noted by the DOJ Evaluation, this flaw exists in both the Kansas and Oklahoma applications.

#### IV. CONCLUSION

IP has made a significant investment in Kansas and Oklahoma including substantial investments for collocation space and equipment. IP is attempting to move ahead and begin providing xDSL services in both of these states in the immediate future. These sunk costs were deployed largely because of IP's belief that this Commission will not cede to pressure to: (1) water down the requirements that flowed from the Texas 271 proceeding, and (2) assure that SWBT fully and neutrally implements all collocation/DSL-related orders since the initial Texas 271 filing. Unfortunately, the result from the state proceedings has left the job far from complete. It is up to this Commission to remind SWBT that a line in the sand was drawn in the *Texas 271 Order*, the *Line Sharing Order*, the *UNE Remand Order*, etc. SWBT must raise its application to that level before it can obtain 271 relief. To date, however, SWBT is woefully short. Still, it is in SWBT's ability to develop a sufficient application. IP's initial comments, at that the state level, carved out a path for SWBT to obtain 271 relief and the DOJ Evaluation is not inconsistent with those comments.

Specifically, as stated in IP's initial comments, "It is IP's hope that working together, all of the terms, conditions, and rates issues can be addressed with permanent or sufficient interim proposals with streamlined process[es] so that the only remaining obstacle will be SWBT's demonstration of adequate DSL-related performance through sufficient commercial volumes or in the alternative third party monitored test volumes."<sup>7</sup>

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<sup>6</sup> Id. at 3-5.

<sup>7</sup> *IP Initial Comments* at 29-30.

December 11, 2000

Respectfully submitted,

IP COMMUNICATIONS CORPORATION

By   
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**AFFIDAVIT OF HOWARD SIEGEL**  
**ON BEHALF OF IP COMMUNICATIONS CORPORATION**

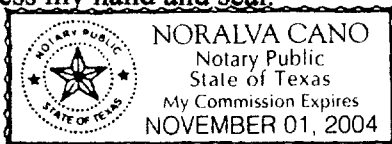
Before me, the undersigned authority, on this 8<sup>th</sup> day of ~~November~~<sup>Dec</sup>, 2000, personally appeared Howard Siegel, who, upon being duly sworn, states the following:

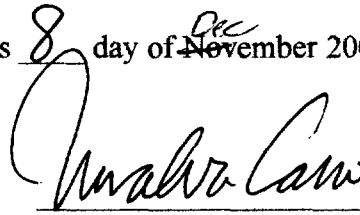
1. My name is Howard Siegel. I am over the age of 21, of sound mind, and am competent to testify as to the matters stated herein. I am the Vice President of Regulatory Policy for IP Communications Corporation ("IP"). I have personal knowledge of the facts contained herein.
2. The facts contained in these comments and related attachments are accurate. Moreover, I have personal knowledge as to this information through the due course of my duties in my capacity as IP's Vice President of Regulatory Policy.

Further Affiant sayeth not.

  
Howard Siegel

Sworn to and subscribed to before me this 8 day of ~~November~~<sup>Dec</sup>, 2000, to certify which witness my hand and seal.



  
Notary Public in and for the State of Texas  
My Commission expires: 11-01-04

## **CERTIFICATE OF SERVICE**

I, Howard J. Siegel, have this 11<sup>th</sup> day of December, 2000, caused a true copy of the Reply Comments of IP Communications Corporation on SBC's Applications for 271 Relief in Kansas and Oklahoma to be served on the parties listed below:

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